UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DAVID NORKIN,

Plaintiff, Case No. 05 CV 9137 (DC)

-against-

DLA PIPER RUDNICK GRAY CARY, LLP,

Defendant.

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**AFFIDAVIT OF DAVID NORKIN**

DAVID NORKIN, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action. I submit this affirmation in opposition to defendant's motion to dismiss and/or for summary judgment.

**A. Defendant performed personal legal services for me**

2. In August 2000, I was the President and sole shareholder of Britestarr Homes, Inc.

3. In August 2000, Britestarr retained Piper Marbury ["Piper"], a predecessor firm to defendant, to provide legal services in connection with the development of a power plant on the Oak Point property.

4. Early on in Piper's representation of Britestarr, I sought advice from Ken Willig and Dean Colucci, partners at Piper, regarding my personal bankruptcy case.

5. While seeking advice regarding my personal bankruptcy

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case, I stated to Willig and Calucci that I realized they were representing Britestarr, and not me, but I wanted their advice. Willig responded that because Britestarr was a subchapter S corporation and I was its sole shareholder, Piper was representing both me and Britestarr.

6. During and subsequent to that conversation, Willig and other Piper attorneys provided advice to me in a personal capacity, including advice regarding my personal bankruptcy case. Piper attorneys had multiple meetings with my bankruptcy attorneys from the firm Zeisler & Zeisler regarding my personal bankruptcy.

7. In the spring of 2002, Piper attorneys, including Dean Colucci, ultimately advised me that it would be in my best interest to resign my position as President of Britestarr.

8. I have reviewed my deposition answers given on October 28, 2004 at p. 149 of the transcript. I do not believe that those answers contradict the facts set forth above.

9. First, in the context of testifying regarding the ABB deal, I was asked who Piper represented, and I stated, "Britestarr Homes", which was correct. Piper was retained to represent, and did in fact represent, Britestarr Homes.

10. I then remembered that my wife and I had hired Piper to do a will, so I added that to my answer at lines 11 through 12.

11. I was then asked whether Piper represented my wife and I with respect to a small estate matter, and I answered

affirmatively.

12. Finally, I was asked the following question and gave the following answer:

> Q: Is that the only matter that anybody at Piper did for you individually, the only matter that was opened up for you individually?
> A: That's it.

(p. 149, l. 21-24). I took this question to be asking whether the estate matter was the only matter that Piper "opened up" for me individually, meaning was it the only matter where the case file was opened up with me listed as the client. I believe my affirmative answer to that question was correct.

13. In that deposition, I was never asked directly whether I believed that Piper, while representing Britestarr, was also representing me, the sole shareholder, individually. If I had been asked that question directly, I would have answered yes.

14. In that deposition, I was never asked directly whether Piper, while representing Britestarr, gave advice to me in my individual capacity. If I had been asked that question directly, I would have answered yes.

15. In that deposition, I was never asked directly whether I had any conversations with Piper attorneys regarding the issue of whether I was being represented by them individually. If I had been asked that question directly, I would have answered yes, and would have testified regarding the conversation set forth above in

¶ 5.

**B. I would have accepted ABB's offer in March 2002**

16. In December 1998, Britestarr gave a three year option to purchase a parcel of land in the Bronx to an entity known as ABB Equity Ventures, Inc. In late 2000 and early 2001, ABB sought to extend the option expiration date from December 2001 until December 31, 2002.

17. In early 2001, I rejected several offers made by ABB to extend ABB's option to purchase Britestarr's property. I did so on the advice of Piper attorneys, including Ken Willig, who told me that ABB would never buy the property and that Britestarr would do better by selling the property to Mirant, another company seeking to develop a power plant on the site (a company which unbeknownst to me was also represented by Piper), than by extending ABB's option on the property.

18. By early 2002, numerous circumstances had changed which would have made ABB's offer more attractive. These new circumstances were as follows:

(1) Mirant, the only other potential purchaser who had been identified had run into financial trouble and was no longer a prospective buyer -- thus, I no longer had an incentive to let ABB's option lapse;

(2) Following rejection of ABB's March 2001 offer, ABB had filed a lawsuit against Britestarr and me; and

(3) by March 2002 Piper was advising me, for the first time, that Britestarr had no alternative but to file for bankruptcy and that I should resign as President of Britestarr.

19. Had I known that ABB was willing in March 2002 to make an agreement under the same terms as the offer I rejected in March 2001, I would have accepted that offer, as it would have allowed me to avoid putting Britestarr into bankruptcy, and would have provided funds to continue Britestarr's ability to pay my salary as President. In fact, at my deposition in Britestarr Homes, Inc. v. Piper Rudnick LLP, on October 27, 2004, I testified that I would have accepted that offer had I been informed about it:

> Q: Let me ask it this way. Did anyone at Piper Rudnick, Mr. Colucci, Mr. Willig, Mr. Langlois, Mr. Califano, Mr. Walsh tell you before they drafted the papers for your resignation and placing Britestarr Homes into bankruptcy, did any one of them tell you that in that time period, the spring of 2002, ABB was still willing to renew and extend the option agreement, pay money to Britestarr Homes and keep in place the same option agreement, or the financial terms, the same financial terms of the original option agreement?
>
> A: Well, obviously if I knew about it we wouldn't have gone into Chapter 11. I was not made aware of this and I'm very chagrined to hear this.

(Deposition of David Norkin, 10/17/04, pp. 16-17).

20. Defendant asserts that I was angry at ABB and therefore would not have made a deal with that company in 2002. I would have had no choice but to accept the offer whatever my personal

feelings.

21. I have reviewed the deposition answers and documents dated in or about **March 2001** relied upon by Piper to argue that I would not have accepted the offer from ABB in March 2002, and do not believe that they are contradictory to my sworn testimony in that same deposition, and my sworn statement above, that I would have accepted the ABB offer in **March 2002.**

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DAVID NORKIN

Sworn to before me
this ___ day of December, 2005

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NOTARY PUBLIC